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OFFICE OF PETITIONS

In re Application of :
Ting et al. :
Application No. 10/776,057 : DECISION ON
Filed: February 11, 2004 : PETITION
Atty Docket No. 112056-0139U :

This is a decision on the PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT AS UNAVOIDABLY ABANDONED UNDER 37 CFR 1.137(A) OR ALTERNATIVELY FOR REVIVAL OF APPLICATION AS UNINTENTIONALLY ABANDONED UNDER 37 CFR 1.137(B) filed August 14, 2007.

A courtesy Notice of Abandonment was mailed on April 20, 2007. The Notice stated that the above-identified application became abandoned for failure to file a timely reply to the Office letter mailed on September 14, 2006.

In response, applicants filed the instant petition, asserting that the Office action was not received. Applicants state that the amendment was never available on Private Pair. Applicants conclude therefore that replying to the Notice of Non-Compliant Amendment within the time period set forth was unavoidable.

There is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to

overcome this presumption. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner has supported his claim of non-receipt with all of the above information. Nonetheless, a review of the image file wrapper supports petitioner's contention. The image file wrapper is the Official record of papers filed and mailed in this application. No Notice of Non-Compliant Amendment mailed September 14, 2006 or any time thereabout is present in the image file wrapper for this application. An amendment was timely filed on September 7, 2006 in response to the non-final Office action mailed August 8, 2006. As the record supports petitioner's contention that no Notice of Non-Compliant Amendment mailed September 14, 2006 was received, the application cannot be considered abandoned for failure to respond.

In view thereof, the notice of abandonment mailed April 20, 2007 and the holding of abandonment are hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Consideration of the petition under 1.137 is unnecessary. Accordingly, the petition fee of \$500 charged to Deposit Account No. 03-1237 is being refunded. No additional petition fee is being charged.

Technology Center AU 2168 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for consideration of the amendment filed September 7, 2006. It should be determined if mailing of a Notice of Noncompliant Amendment (with a new period for response) or other action in response to the amendment filed September 7, 2006 is warranted.

Application No. 10/776,057

Page 3

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.



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